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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

In re L.R., a Person Coming Under the Juvenile
Court Law.

STANISLAUS COUNTY COMMUNITY
SERVICES AGENCY,

Plaintiff and Respondent,

v.

LISA S.,

Defendant and Appellant.

F077841

(Super. Ct. No. 518147)

OPINION

THE COURT*

APPEAL from orders of the Superior Court of Stanislaus County. Ann Q.
Ameral, Judge.

Melissa A. Chaitin, under appointment by the Court of Appeal, for Defendant and
Appellant.

John P. Doering, County Counsel, and Maria Elena Ratliff, Deputy County
Counsel, for Plaintiff and Respondent.

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* Before Levy, Acting P.J., Peña, J. and Snauffer, J.

INTRODUCTION

Appellant Lisa S. is the mother of L.R., a minor. L.R. was declared a dependent of the court pursuant to Welfare and Institutions Code section 300, subdivision (b). Mother contends the juvenile court should have conducted a hearing to determine subject matter jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) and the jurisdiction and disposition orders must be reversed because the state with subject matter jurisdiction is Oregon. We affirm.

FACTUAL AND PROCEDURAL SUMMARY

On November 14, 2017, a Welfare and Institutions Code section 300 petition was filed by the Stanislaus County Community Services Agency (the agency) on behalf of L.R., born in 2001. The petition alleged that L.R. was at substantial risk of suffering serious physical harm or illness because of mother's willful or negligent failure to supervise and protect the child, and mother's substance abuse rendered her unable to provide regular care for L.R. The petition showed mother lived in Stanislaus County and L.R. had been residing with mother. Father was listed with an address in Oregon.

L.R. had reported that on November 8, 2017, she returned home from school accompanied by a friend. Mother was "under the influence" and told them to leave. As L.R. was packing some clothes, mother yelled at her and slapped her across the face. When L.R. and her friend tried to leave, mother pushed the friend against the wall. L.R. pushed her mother away from her friend and mother grabbed L.R. by the neck. The friend's mother arrived at that point and L.R. and her friend were able to leave the house.

Mother reported that L.R. had run away from home and she wanted her daughter returned. When law enforcement brought L.R. home, mother "had been drinking heavily." Mother locked herself in her room and refused to talk with the police. Law enforcement was concerned "because of the mother's state." L.R.'s grandmother stated mother "only tapped" L.R., denied mother choked L.R., and denied mother had a drinking problem. L.R. was left in grandmother's care.

A few hours later, L.R. called the police and reported mother attempted to choke her; L.R. left the house and headed for the police station. Police transported L.R. home, but mother refused to open the door. Police spoke with mother with the door closed; mother stated she did not want custody of L.R. and to take her away or leave her in the backyard. Police transported L.R. to the police station and called child protective services.

L.R. reported that her father lived in Oregon. When she lived with her father in April 2017, he physically abused her. L.R. stated she was placed in a transitional home before being returned to her mother. The detention report indicated the agency was going to inquire whether there was an open child protective services case in Oregon involving father. The detention report also showed a lengthy criminal record for father in California, including domestic violence convictions and probation violations.

Mother appeared at the November 15, 2017 detention hearing, in person; father appeared by telephone. Counsel was appointed for both parents. During the hearing, the juvenile court admonished both parents to participate in services, warning them failure to do so could lead to termination of parental rights and a permanent plan of adoption for L.R. Father responded, "Where do I sign?" [¶] "I want to sign them right now and let her do her thing."

The matter was set for a jurisdiction and disposition hearing on December 12, 2017, at which time the agency requested a continuance. The agency indicated it had requested "CPS documentation from Oregon about the father." The agency requested a continuance in order to obtain the documentation.

On January 5, 2018,¹ mother filed a Welfare and Institutions Code section 388 petition requesting dismissal of the case. Mother alleged she had not been given proper notice.

¹ Subsequent references to dates are to dates in 2018 unless otherwise stated.

A jurisdiction and disposition report dated January 9, included information from child protective services in Oregon. Mother had primary physical custody of L.R. and had been living in California since 2002. However, L.R. had been living with her father in Oregon for a period of time because mother dropped L.R. off for visitation at father's home and "he simply kept her." On May 16, 2017, father reported L.R. was no longer living with him, but he claimed she was staying with friends in Oregon.

The report reflected L.R. was in contact with child protective services in Oregon on August 31, 2017. L.R. told the social worker in Oregon she was living in a homeless shelter, did not want to be with her father, and wanted to become emancipated. On August 31, 2017, mother was in contact with child protective services in Oregon. Oregon reported mother had "full custody" of L.R. and was trying to come to Oregon to retrieve L.R.

L.R. had been placed in foster care after her removal from mother. L.R. was happy in the foster home and stated she "really likes it here." L.R. did not want to be returned to mother's care; she wanted to graduate high school, be independent, "emancipate out," and become a nurse. L.R. did ask the social worker to obtain her clothes from her mother.

At the January 9, jurisdiction and disposition hearing, both parents requested a contested hearing, which was set for January 30. The juvenile court informed mother her Welfare and Institutions Code section 388 petition was denied as premature because jurisdiction had not yet been determined.

On January 24, mother filed a 52-page document entitled objections and corrections to the reports of the child welfare caseworker with 164 pages of attachments. Mother asserted L.R.'s home state was Oregon.

Mother filed additional documents with the juvenile court. An ex parte petition and declaration in support of the order of assistance mother filed in Douglas County, Oregon on May 12, 2017, includes the statement "Mother & children lived in California.

Never lived in other state.” Mother was asking the Oregon court to enforce the California child custody order issued on dissolution of her marriage to father in 2006. The California judgment awards sole legal and physical custody of L.R. to mother. The Oregon court issued an order finding mother was entitled to custody of L.R. under a current and valid order, father was in substantial violation of the custody order, and law enforcement was directed to use reasonable means to deliver L.R. to mother’s custody.

On February 13, the juvenile court admonished mother that as long as she was represented by counsel, she could not independently file documents. On February 20, it was stipulated that mother’s filings would be treated as a “trial brief” and part of the record.

At the February 28, contested hearing on jurisdiction and disposition, L.R.’s grandmother testified that L.R. lived with her mother in California between the ages of one and 10. In the past year, L.R. had been back and forth between Oregon and California, going to Oregon in April 2017 and returning to California in October 2017.

The social worker testified that L.R. had been living with mother for 27 consecutive days prior to detention.

The matter was continued several times for various reasons and eventually was set to be heard on June 6. Prior to the hearing, an addendum report was filed that included an email from L.R. L.R. indicated she had “switched from home to home and from state to state.” Home life was chaotic with her parents. L.R. did not feel safe with either parent and wanted to remain in foster care. In foster care, L.R. had obtained a job, was doing well in school, and felt safe.

At the June 6 hearing, both parents stipulated that the Welfare and Institutions Code section 300, subdivision (b)(1) allegation pertaining to mother be found true and the allegation pertaining to father be stricken. The juvenile court found the allegation true and proceeded to disposition. Mother stated she did not want custody of L.R. and was waiving reunification services.

L.R. testified that she lived with mother in California until April 2017, when she went to live in Oregon. L.R. lived with various relatives, including an adult sister, her father, and her aunt and uncle. In October 2017, she went back to live with mother. The social worker testified that at the time of detention, L.R. was living with her mother.

The matter was continued to June 29, for a continued disposition hearing. At the continued disposition hearing, the juvenile court found that “before the circumstances that gave rise to jurisdiction [L.R.] was not in her father’s care.” The juvenile court also found that placement at this time with father would be “detrimental” to L.R.

The juvenile court ordered the educational rights be vested in the foster mother and father. The plan was to provide services to L.R. to assist her “in making the transition from foster care to independent living.”

Mother filed a timely notice of appeal.

DISCUSSION

Mother contends the juvenile court failed to comply with the UCCJEA in that it failed to determine whether Oregon was L.R.’s home state. Mother contends the jurisdiction and disposition orders must be reversed and the matter remanded for the juvenile court to determine subject matter jurisdiction, which mother contends is with the state of Oregon. “Subject matter jurisdiction either exists or does not exist at the time the action is commenced and cannot be conferred by stipulation, consent, waiver or estoppel.” (*In re A.M.* (2014) 224 Cal.App.4th 593, 598.)

Overview of the UCCJEA Jurisdictional Provisions

Under the UCCJEA, Family Code² section 3400 et seq., a California court has jurisdiction to make a child custody determination only if certain statutory conditions are met. (§ 3421, subd. (a).) For example, jurisdiction exists where California is the child’s home state on the date the proceeding commenced, or was the child’s home state within

² References to code sections are to the Family Code unless otherwise specified.

six months before the proceeding commenced and the child is absent from California but a parent, or a person acting as a parent, continues to live in California. (§ 3421, subd. (a)(1).) Under section 3402, subdivision (g), “[h]ome state” is defined as “the state in which a child lived with a parent ... for at least six consecutive months immediately before the commencement of a child custody proceeding.” A period of temporary absence is included as part of the six-month period. (*Ibid.*)

In addition to the “home state” basis for jurisdiction under subdivision (a)(1) of section 3421, three other nonemergency grounds for exercising jurisdiction are set forth in section 3421. (See § 3421, subd. (a)(2), (3) & (4).)

Section 3422, subdivision (a) provides in relevant part that, “a court of this state that has made a child custody determination ... has exclusive, continuing jurisdiction” A California court loses jurisdiction when neither the parents nor the child reside in California, or when neither the child and one parent have a significant connection with this state. (§ 3422, subd. (a)(1) & (2).)

Section 3424 creates an exception to the grounds for exercising jurisdiction to make a child custody determination. (*In re Cristian I.* (2014) 224 Cal.App.4th 1088, 1097 (*Cristian I.*)) It provides that a California court may exercise “temporary emergency jurisdiction” when a “child is present in this state and ... it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to, or threatened with, mistreatment or abuse.” (§ 3424, subd. (a).) An emergency exists when there is an immediate risk of danger to the child if he or she is returned to a parent. (*Cristian I.*, *supra*, 224 Cal.App.4th at p. 1097.) When a trial court considers whether it has jurisdiction under section 3424, “ ‘[t]he finding of an emergency ‘should not be made ‘in a rush to judgment’ but rather ‘after a full and fair evidentiary hearing.’ ” ’ ” (*In re Marriage of Fernandez-Abin & Sanchez* (2011) 191 Cal.App.4th 1015, 1042.) “Unsubstantiated allegations are insufficient to invoke emergency jurisdiction.” (*In re C.T.* (2002) 100 Cal.App.4th 101, 107.) Although emergency

jurisdiction is ordinarily intended to be short term, a court may continue to exercise its authority as long as the risk of harm creating the emergency remains. (*In re Angel L.* (2008) 159 Cal.App.4th 1127, 1139.) Also, temporary emergency jurisdiction may ripen into permanent jurisdiction where California has become the child's home state. (*Id.* at p. 1140.)

Standard of Review

Mother contends the juvenile court failed to conduct an evidentiary hearing to determine L.R.'s home state, and thus the state with subject matter jurisdiction, under the UCCJEA.

"Failure to comply with the procedural requirements of the UCCJEA is subject to harmless error analysis." (*In re R.L.* (2016) 4 Cal.App.5th 125, 143.) The harmless error test set forth in *People v. Watson* (1956) 46 Cal.2d 818, 836 applies to the UCCJEA procedural error. (*In re M.M.* (2015) 240 Cal.App.4th 703, 717–718.) Mother has the burden of showing it is reasonably probable a result more favorable to mother would have been reached in the absence of the error. (*Ibid.*)

Analysis

The UCCJEA is the exclusive method for determining the proper forum in custody disputes involving other jurisdictions, including juvenile dependency proceedings. (§§ 3421, subd. (b), 3402, subd. (d); *In re Nada R.* (2001) 89 Cal.App.4th 1166, 1173.) There was never any dispute that a valid California custody order existed which granted sole legal and physical custody of L.R. to mother. On May 12, 2017, mother sought to enforce the California custody order in Oregon and asserted, "Mother & children lived in California. Never lived in other state." The Oregon court issued an order finding that mother was entitled to custody of L.R. under a current and valid custody order.

None of the circumstances set forth in section 3422 that would deprive a California court of jurisdiction existed in this case. Consequently, California retained exclusive jurisdiction to make child custody determinations. (§ 3422, subd. (a).) L.R.

and mother were both residing in California at the time the dependency was initiated and L.R. was enrolled in high school in Stanislaus County. While father resided in Oregon, he had no legal custody of L.R.; L.R. was residing in California with her mother who had legal custody.

Furthermore, under the UCCJEA, a California court has “temporary emergency jurisdiction” to issue custody orders for a child subject to an existing sister state custody order only if the child is present in this state and the court finds that an emergency necessitates the protection of the child from mistreatment and abuse. (§ 3424, subd. (a); *In re C.T.*, *supra*, 100 Cal.App.4th at p. 107.)³ “An ‘emergency’ exists when there is an immediate risk of danger to the child if he or she is returned to a parent.” (*In re Jaheim B.* (2008) 169 Cal.App.4th 1343, 1349; see *In re Nada R.*, *supra*, 89 Cal.App.4th at pp. 1174–1175.) “ ‘Although emergency jurisdiction is generally intended to be short term and limited, the juvenile court may continue to exercise its authority as long as the

³ In addition to exercising temporary emergency jurisdiction, a California court may modify a sister state’s custody order if the conditions specified in section 3423 are met, namely that a California court has jurisdiction to make an initial child custody “determination under paragraph (1) or (2) of subdivision (a) of Section 3421 and either of the following determinations is made: [¶] (a) The court of the other state determines it no longer has exclusive, continuing jurisdiction under Section 3422 or that a court of this state would be a more convenient forum under Section 3427” Section 3421, subdivision (a) provides that a California court has jurisdiction to make an initial child custody determination if: “(1) This state is the home state of the child on the date of the commencement of the proceeding [¶] (2) A court of another state does not have jurisdiction under paragraph (1), or a court of the home state of the child has declined to exercise jurisdiction on the grounds that this state is the more appropriate forum under Section 3427 or 3428, and both of the following are true: [¶] (A) The child and the child’s parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this state other than mere physical presence. [¶] (B) Substantial evidence is available in this state concerning the child’s care, protection, training, and personal relationships.” “Home state” is defined as the state where the child lived with a parent for at least six consecutive months immediately before the commencement of the child custody proceeding, including periods of temporary absence. (§ 3402, subd. (g).)

reasons underlying the dependency exist.’ ” (*Cristian I., supra*, 224 Cal.App.4th at p. 1097.)

Here, if the California court did not have continuing and exclusive jurisdiction based upon the 2006 custody order, the facts supported an exercise of emergency jurisdiction. L.R. had returned home from school accompanied by a friend. Mother was “under the influence” and told them to leave. As L.R. was packing some clothes, mother yelled at her and slapped her across the face. When L.R. and her friend tried to leave, mother pushed the friend against the wall. L.R. pushed her mother away from her friend and mother grabbed L.R. by the neck. The friend’s mother arrived at that point and L.R. and her friend were able to leave the house.

Mother reported that L.R. had run away from home and she wanted her daughter returned. When law enforcement brought L.R. home, mother “had been drinking heavily.” Mother locked herself in her room and refused to talk with the police. Law enforcement was concerned “because of the mother’s state.” L.R.’s grandmother stated mother “only tapped” L.R., denied mother choked L.R., and denied mother had a drinking problem. L.R. was left in grandmother’s care.

A few hours later, L.R. called the police and reported mother attempted to choke her; L.R. left the house and headed for the police station. Police transported L.R. home, but mother refused to open the door. Police spoke with mother with the door closed; mother stated she did not want custody of L.R. and to take her away or leave her in the backyard. Police transported L.R. to the police station and called child protective services.

Mother’s conduct toward L.R. created an emergency situation justifying an assumption of jurisdiction by the California court under section 3424. Once emergency jurisdiction existed, the California court could continue to exercise jurisdiction. (*Cristian I., supra*, 224 Cal.App.4th at p. 1097.) L.R. was a minor and mother, the parent with sole

legal custody, stated she did not want custody of L.R. and was waiving reunification services.

California had subject matter jurisdiction under either sections 3421 and 3422, or section 3424. Consequently, any failure to conduct a hearing pursuant to the UCCJEA to determine jurisdiction was harmless. (*In re M.M.*, *supra*, 240 Cal.App.4th at pp. 717–718.)

DISPOSITION

The jurisdiction and disposition orders are affirmed.